

Volume 1
Pages 1-227
Exhibits: 118-122

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-CV-11610-RGS

VISIBLE SYSTEMS CORPORATION, :
Plaintiff :
: v. :
UNISYS CORPORATION, :
Defendant :

DEPOSITION OF JOHN G. NASH, taken on behalf of the Defendant, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Carol A. Fierimonte, Certified Shorthand Reporter and Notary Public within and for the Commonwealth of Massachusetts, (#134693), at the Offices of Sugarman, Rogers, Barshak & Cohen, P.C., 101 Merrimac Street, Boston, Massachusetts, on Thursday, September 14, 2006, commencing at 10:10 a.m.

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INDEX

WITNESS DIRECT CROSS REDIRECT RECROSS

JOHN G. NASH

By Mr. Boesch 4

EXHIBITS

<u>NO.</u>		<u>PAGE</u>
118	Web printout	21
119	Web printout	57
120	Folders List	101
121	Web printout	144
122	Web printout	150

APPEARANCES:

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On behalf of the Plaintiff

SUGARMAN, ROGERS, BARSHAK & COHEN, P.C.
By: William I. Boesch, Esquire
101 Merrimac Street
Boston, Massachusetts 02114
On behalf of the Defendant

PROCEEDINGS

September 14, 2006

IT IS HEREBY AGREED AND STIPULATED by and between counsel for the respective parties that all objections, except as to form, and motions to strike will be reserved until the time of trial or pretrial hearing.

It is further stipulated that the witness will read and sign the deposition under the pains and penalties of perjury. Reading and signing is deemed waived if not read and signed within 30 days of transcript delivery. Filing of the deposition is waived.

JOHN G. NASH,

having first shown proper identification and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOESCH:

Q. Good morning, Mr. Nash. We met off the record, but let me reintroduce myself. I am William Boesch, one of the lawyers for

21

1 Q. Would it help you to look at the
2 chronology that is contained on the
3 company's website?

4 A. Sure.

5 MR. BOESCH: Why don't we mark
6 this as the next exhibit. This is going
7 to be Exhibit No. 118.

8 (Document marked as Exhibit No.
9 118 for identification.)

10 Q. Let me hand you what we have marked as
11 Exhibit No. 118 for identification. And
12 first of all, let me ask you whether you
13 recognize that as a page from the
14 company's current website.

15 (Witness perusing document.)

16 A. Yes.

17 Q. And does the chronology there help you to
18 place in time the merger with IESC?

19 A. Yes. 19 --

20 Q. That was indeed in 1997, right?

21 A. Yes, it was.

22 Q. That was before you returned to the
23 company?

24 A. Yes. About six months before.

22

1 Q. And you were starting to tell us, I think,
2 about the change or how that, how that
3 merger was connected with 2.5 million in
4 revenue that you described as
5 consulting/software.

6 A. Yes. The merger with IESC brought us a
7 new way to look at the marketplace because
8 IESC developed a product called IE
9 Advantage, which later on after the merger
10 became Visible Advantage. And along with
11 that company came many years of consulting
12 and development that they had done that is
13 based on Clive Finkelstein's Information
14 Engineering methodology. He was really
15 the first methodologist to come up with a
16 complete holistic methodology, versus just
17 pieces and parts of the development
18 lifecycle that earlier individuals had
19 come up with.

20 Q. And by development lifecycle, you mean the
21 lifecycle for software development?

22 A. Software and systems development.

23 Q. Systems meaning computer systems?

24 A. Meaning any type of systems.

23

1 Q. Well, are you suggesting that
2 Mr. Finkelstein was somebody with a
3 background in business or management
4 consulting?

5 A. Yes.

6 Q. Okay. What was his background in that
7 area?

8 A. From what I understand of his, of his
9 background, his roots come from IBM. And
10 then after he left, he left IBM, he
11 developed this, this methodology from the
12 late or early '80's up until now.

13 Q. Other than the fact that he came from IBM,
14 do you have any other information about
15 Mr. Finkelstein's background or expertise,
16 if any, in business or management
17 consulting?

18 A. The only thing I know is that -- well, two
19 things. Our developers over the years
20 relied on Clive as a, as a really mentor
21 to help them to embody the methodology in
22 our technology. And we did, the company
23 did work with Clive on a number of
24 engagements around the world over that

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1 time period from '95 onward.

2 Q. What is Mr. Finkelstein's current
3 relationship with Visible Systems?

4 A. He has a -- he represents Visible Systems
5 in Australia. He has a non-paid position
6 of chief scientist for our company. And
7 we work in unison on projects with him
8 from time to time. And Clive is an active
9 author in the public, you know, the
10 popular publications. He writes, he has
11 written numerous books. He has just
12 finished a book, I don't have the title
13 with me, but with that book on his
14 methodologies he puts a CD in there that
15 contained all of our product information
16 and ability to download all of our
17 software tools.

18 Q. You say that book has just been published?

19 A. Yes.

20 Q. You don't remember its name?

21 A. I don't have the title here. I am sorry.

22 Q. When you say that he represents Visible
23 Systems in Australia, what do you mean by
24 that?

25

1 A. Visible Systems Australia is run by Clive.
 2 Q. And what is the business of that company?
 3 A. The business of that company is
 4 consulting, training and software tools.
 5 Q. Does he have any other business besides
 6 Visible Systems Australia?
 7 A. His methodology, which is, you know, that
 8 would be it.
 9 Q. Does he sell any other products or
 10 services other than those associated with
 11 Visible Systems' products?
 12 A. I don't believe so.
 13 Q. You were talking about the merger with
 14 Mr. Finkelstein's company in 1997 and the
 15 effect that that had on Visible Systems'
 16 business. And I would like to take you
 17 back to that topic.
 18 Did Mr. Finkelstein's company
 19 have one or more consultants on its staff?
 20 A. Yes.
 21 Q. Okay. And how many?
 22 A. Full-time consultants, I would say they
 23 had 12 or 14 top experts. And one of the
 24 things that really intrigued us about

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1 their technology that they had developed
 2 is that their consultants over the years
 3 developed something that they called the
 4 Universal Model. And the Universal Model
 5 was a set of integrated business templates
 6 that any organization could use to develop
 7 their, their enterprise architecture. And
 8 that served as a starting point for many
 9 consulting engagements, but it also gave
 10 organizations the ability to have 80
 11 percent of the job of creating that model
 12 for their organization done. They would
 13 just have to tailor it to their business
 14 because, over time, our consultants found
 15 that the work that they were putting into
 16 the consulting engagements looked more and
 17 more the same.
 18 Q. So the business templates was one of the
 19 assets that Visible Systems acquired in
 20 the merger with Mr. Finkelstein's company?
 21 A. Yes.
 22 Q. And those business templates, the company
 23 is still using today?
 24 A. Yes. And as a matter of fact, the

27

1 product, Visible Advantage, where it was
 2 developed initially, those models were
 3 converted over into Visible Analyst for
 4 use there as well as a way of storing
 5 intellectual property and reusing it.
 6 Q. What is the difference between the way in
 7 which the models are used by Visible
 8 Advantage and Visible Analyst?
 9 A. The difference --
 10 MR. RENDINI: Objection. You can
 11 answer.
 12 A. The difference is that Visible Advantage
 13 looks at data differently than Visible
 14 Analyst does. Visible Advantage has more
 15 sophisticated business modeling
 16 capabilities built into it; and as a
 17 result of that, we built the appropriate
 18 links to continue that development process
 19 in Visible Analyst. And just one other
 20 thing that, I don't know if it is of value
 21 to you to understand this, but Visible
 22 Analyst offers other more detailed
 23 capabilities than Visible Advantage in
 24 that it takes a look at process

28

1 information and data information
 2 simultaneously. And what that means is if
 3 you have a particular process, you can
 4 look at how the data is being input and
 5 output from that process with Visible
 6 Analyst, so it gives you kind of a unique
 7 view of what you are trying to, the
 8 problem you are trying to solve.
 9 Q. As of the time of the merger with
 10 Mr. Finkelstein's company, how many
 11 consultants did Visible Systems have on
 12 its staff?
 13 A. We had at that time no consultants on our
 14 staff. They were subcontracted.
 15 Q. How many contracts with outside
 16 consultants did Visible Systems have at
 17 that time?
 18 A. You know, that I don't know. But I would
 19 guess that we had relationships with seven
 20 or eight different small groups.
 21 Q. And is it fair to say that you would
 22 contract with them on a case-by-case
 23 basis; that is, as needed for a particular
 24 engagement you would retain an outside